

### **REMARKS**

Claims 1-7 and 10 were pending in the instant application. Claims 1-3 have been deemed allowed by the Examiner. *No new matter has been added.*

**SECOND REQUEST.** Our records indicate that an Information Disclosure Statement was filed on January 9, 2001. However, Applicants have not received a confirmation copy of the 1449 form, indicating acknowledgement of the cited references by the Examiner. **In this regard, Applicants respectfully request that the Examiner acknowledge the references cited by the Applicants.** For your convenience, a copy of the 1449, as filed, as well as the acknowledgement postcard is enclosed herewith.

### **Judicially Created Doctrine of Obviousness-Type Double Patenting**

*Rejection of Claims 1-7 and 10 under the Judicially Created Doctrine of Obviousness-Type Double Patenting over U.S. Patent Nos. 6,103,698, 6,015,790, 5,831,002, and 5,965,700*

Claims 1-7 and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,103,698, 1-11 of U.S. Patent No. 6,015,790, 1-10 of U.S. Patent No. 5,831,002, and 1-4 of U.S. Patent No. 5,965,700. Applicants have addressed the obviousness-type double patenting rejections with respect to U.S. Patent Nos. 6,103,698, 5,831,002, and 5,965,700 by the submission of terminal disclaimers, and therefore respectfully request withdrawal of the obviousness-type double patenting rejections with respect to these patents.

As may be evident by the Terminal Disclaimers, ownership of the referenced patents and the instant application has recently been transferred from BASF Aktiengesellschaft to Abbott GmbH & Co. KG by virtue of an Assignment recorded in the United States Patent and Trademark Office on June 10, 2003, at Reel 013718, Frame 0861. However, U.S. Patent No. 6,015,790, is presently in the process of undergoing reassignment from BASF Aktiengesellschaft to Abbott GmbH & Co. KG. We have, therefore, today filed a Notice of Appeal and once we receive the executed assignment and upon recordation, we will file the remaining terminal disclaimer.

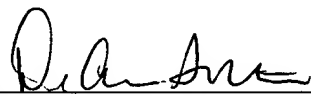
**CONCLUSION**

In view of the foregoing, favorable reconsideration and withdrawal of the rejections, and allowance of this application with all pending claims are respectfully requested. If a telephone conversation with Applicants' attorney would expedite prosecution of the above-identified application, the Examiner is invited to call the undersigned at (617) 227-7400.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP

Dated: December 1, 2003

By   
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(617) 742-4214 (Fax)  
Attorney/Agent For Applicant



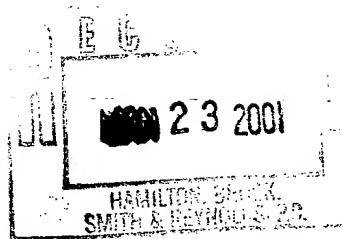
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Initials: CSE/jwb      Docket N .: 2079.1009-001      Date: 1/9/01  
This acknowledges receipt of ☒ CONTINUATION ☐ DIVISION 53(b) as follows:  
☒ Application Transmittal      Express Mail Label No. EL552288263US  
☒ Fee Transmittal w/copy      Statement of S/E Status  
☒ Specification - Total pages 58  
☐ Drawings ☐ Formal ☐ Informal - Total sheets             
☐ Executed Declaration/POA - Total pages             
☒ Copy of executed Declaration/POA from prior Application No. 09/097,184  
☐ Assignment w/Recordation Sheet w/postcard  
☒ Sequence Listing in Paper, Statement 1.821 (g)  
☒ Other IDS and 1449 (3 pgs); Remarks Letter; Request Under 37 CFR 1.821(e)  
☒ Check (\$1110. )      Authorization to Charge all Fees

**Applicant(s):**

☒ Continuation ☐ Division of Application No. 09/097,184 U.S. PTO  
Title: Antineoplastic Peptides  
Date received by the PTO: 01/09/01

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FORM PTO-1449

(REV. 7-80)

## INFORMATION DISCLOSURE CITATION

IN AN APPLICATION

January 8, 2001

(Use several sheets if necessary)

ATTY. DOCKET NO.

2079.1009-001

Continuation of SERIAL NO.

09/097,184

APPLICANT

Wilhelm Amberg, *et al.*

FILING DATE

GROUP

1646

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## U.S. PATENT DOCUMENTS

EXAM- INER INI- TIAL	DOCUMENT NUMBER	DATE	NAME	CLASS	SUB- CLASS	FILING DATE IF APPROPRIATE
AA	4,816,444	3/28/89	Pettit, <i>et al.</i>	514	17	7/10/87
AB	5,530,097	6/25/96	Pettit, <i>et al.</i>	530	330	8/1/94
AC	5,504,191	4/2/96	Pettit, <i>et al.</i>	530	330	8/1/94
AD	5,502,032	3/26/96	Haupt, <i>et al.</i>	514	17	1/5/94
AE	5,554,725	09/10/96	Pettit, G.R.	530	330	09/14/94
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## FOREIGN PATENT DOCUMENTS

DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB- CLASS	TRANSLATION YES NO
AL 96/40751	19-DEC-96	WO			
AM 96/40752	19-DEC-96	WO			
AN 92/02541	20-FEB-92	WO			
AO 97/17364	15-MAY-97	WO			
AP 0 398 558	22-NOV-90	EPO			
AQ 0 598 129	25-MAY-94	EPO			

## OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

AR	Pettit, G.R., <i>et al.</i> , "The Isolation and Structure of a Remarkable Marine Animal Antineoplastic Constituent: Dolastatin 10," <i>J. Am. Chem. Soc.</i> 109:6883-6885 (1987).
AS	Bai, R., <i>et al.</i> , "Structure-Activity Studies with Chiral Isomers and with Segments of the Antimitotic Marine Peptide Dolastatin 10," <i>Biochemical Pharmacology</i> 40(8):1859-1864 (1990).
AT	Pettit, G.R., <i>et al.</i> "Antineoplastic Agents. 220. Synthesis of Natural (-)-Dolastatin 15," <i>J. Am. Chem. Soc.</i> 113:6692-6693 (1991).

EXAMINER

DATE CONSIDERED

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	AB2					
	AC2					
	AD2					
	AE2					
	AF2					

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	DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUB- CLASS	TRANSLATION YES NO
	AL2	93/23424	25-NOV-93	WO		
	AM2					
	AN2					
	AO2					
	AP2					
	AQ2					

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## OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

AU	Bai, R., et al., "Dolastatin 15, a potent antimitotic depsipeptide derived from <i>Dolabella auricularia</i> . Interaction with tubulin and effects on cellular microtubules," 1-Pharmacology Abstract 117: 103735g pg. 41 (1992).
AV	Pettit, G.R., et al., "Isolation and Structure of the Cytostatic Depsipeptide Dolastatin 13 from the Sea Hare <i>Dolabella auricularia</i> ," J. Am. Chem. Soc. 111(13):5015-5017 (1989).
AW	Pettit, G.R., et al., "Antineoplastic Agents 337. Synthesis of Dolastatin-10 Structural Modifications," Anti-Cancer Drug Design 10:529-544 (1995).
AX	Miyazaki, K., et al., "Synthesis and Antitumor Activity of Novel Dolastatin-10 Analogs," Chem. Pharm. Bull. 43(10):1706-1718 (1995).
AY	Pettit, G.R., et al., "Isolation and Structure of the Cytostatic Linear Depsipeptide Dolastatin 15," J. Org. Chem. 54:6005-6006 (1989).

EXAMINER

DATE CONSIDERED

FORM PTO-1449  
(REV. 7-80)

ATTY. DOCKET NO.  
2079.1009-001

Continuation of SERIAL NO.  
09/097,184

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	AG2					
	AH2					
	AI2					
	AJ2					
	AK2					
	AA3					

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	AL3					
	AM3					
	AN3					
	AO3					
	AP3					
	AQ3					

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OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)

AZ	Pettit, G.R., et al., "The Dolastatins 20. A convenient synthetic route to Dolastatin 15." Tetrahedron 50(42):12097-12108 (1994).
AR2	Pettit, G.R., et al., "Isolation of Dolastatin 10-15 from the Marine Mollusc <i>Dolabella Auricularia</i> , Tetrahedron 49(42):9151-9170 (1993).
AS2	
AT2	

EXAMINER

DATE CONSIDERED